

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS MARK HARRIS,)	
)	2:15cv192
Petitioner,)	Electronic Filing
)	
v.)	Judge David Stewart Cercone
)	
WARDEN OF SCI-DALLAS;)	
DISTRICT ATTORNEY OF)	
ALLEGHENY COUNTY; and the)	
ATTORNEY GENERAL FOR THE)	
STATE OF PENNSYLVANIA,)	
)	
Respondents.)	

MEMORANDUM ORDER

This case was commenced on February 12, 2015, and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges. On February 27, 2015, Petitioner paid the filing fee in full and his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 was filed. (ECF No. 3.)

On March 16, 2015, Magistrate Judge Eddy filed a Report and Recommendation (ECF No. 4) recommending that the Petition for Writ of Habeas Corpus be summarily dismissed as Petitioner has not received permission from the United States Court of Appeals for the Third Circuit to file a second or successive petition. It was also recommended that that a certificate of appealability be denied. Petitioner was served with the Report and Recommendation at his listed

address and was advised Objections to the Report and Recommendation were due by April 2, 2015. Plaintiff has not filed any objections nor has he sought an extension of time in which to do so.

This motion is a second or successive § 2254 petition. A habeas application is classified as second or successive if a prior application has been decided on the merits, and the prior and subsequent applications challenge the same conviction. C.f. Magwood v. Patterson, 561 U.S. 320, 341-42 (2010) ("the phrase 'second or successive' must be interpreted with respect to the judgment challenged," and where "there is a new judgment intervening between the two habeas petitions, . . . an application challenging the resulting new judgment is not 'second or successive' at all."); In re Brown, 594 F. App'x 726, 728 (3d Cir. 2014) (same). Here, both of Petitioner's § 2254 petitions challenge the same 1991 conviction and sentence. The Court denied Petitioner's first petition on the merits and petitioner raises the same bases for challenging that conviction in the instant petition.¹ Thus, Petitioner's new application is a second or successive petition within the meaning of 28 U.S.C. § 2244.

The record is clear that Petitioner has not obtained leave from the United States Court of Appeals for the Third Circuit to file his new petition.

After de novo review of the petition and the Report and Recommendation, the following order is entered:

¹ On April 21, 2005, the Court denied on the merits Petitioner's first petition and denied a certificate of appealability. See Harris v. Lavan, 2:03cv283 (W.D. Pa.) On September 6, 2005, the United States Court of Appeals denied Petitioner's request for a certificate of appealability "for failure to make a substantial showing of the denial of a constitutional right." The appellate court concluded that "Appellant's conviction for robbery and thus felony murder satisfies the Federal Constitution's demands."

AND NOW, this 23rd day of April, 2015;

IT IS ORDERED that the instant petition for writ of habeas corpus shall be, and hereby is, **DISMISSED** for lack of jurisdiction. Inasmuch as reasonable jurists would not find it debatable whether the instant petition is a second or successive petition as to which jurisdiction is lacking, **IT IS FURTHER ORDERED** that no certificate of appealability shall issue.

The Report and Recommendation filed on March 16, 2015 (ECF No. 4), as augmented above is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.



David Stewart Cercone
United States District Judge

cc: THOMAS MARK HARRIS
BN9618
1000 Follies Rd.
Dallas, PA 18612
(via U.S. First Class Mail)